

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

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AHCA
AGENCY CLERK

2011 OCT 24 P 12:05

STATE OF FLORIDA, AGENCY FOR
HEALTH CARE ADMINISTRATION,

Petitioner,

v.

AHCA NO. 2011008689

NATIONAL DEAF ACADEMY, LLC d/b/a
NATIONAL DEAF ACADEMY,

Respondent.

FINAL ORDER

Having reviewed the Administrative Complaint, and all other matters of record, the Agency for Health Care Administration finds and concludes as follows:


1. The Agency has jurisdiction over the above-named Respondent pursuant to Chapter 408, Part II, Florida Statutes, and the applicable authorizing statutes and administrative code provisions.
2. The Agency issued the attached Administrative Complaint and Election of Rights form to the Respondent. (Ex. 1) The Election of Rights form advised of the right to an administrative hearing. The Respondent received the Administrative Complaint and Election of Rights form (Ex. 2), but did not timely file the Election of Rights form or other hearing request with the Agency Clerk. The Respondent thus waived the right to a hearing to contest the allegations and sanction sought in the Administrative Complaint. Cann v. Department of Children and Family Services, 813 So.2d 237 (Fla. 2d DCA 2002).

Based upon the foregoing, it is **ORDERED**:

1. The findings of fact and conclusions of law set forth in the Administrative Complaint are adopted and incorporated by reference into this Final Order.
2. The Respondent shall pay the Agency \$3,000.00. If full payment has been made, the cancelled check acts as receipt of payment and no further payment is required. If full payment has not been made, payment is due within 30 days of the Final Order. Overdue amounts are subject to statutory interest and may be referred to collections. A check made payable to the "Agency for Health Care Administration" and containing the AHCA ten-digit case number should be sent to:

Office of Finance and Accounting
Revenue Management Unit
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 14
Tallahassee, Florida 32308

ORDERED at Tallahassee, Florida, on this 21 day of October, 2011.



Elizabeth Dudek, Secretary
Agency for Health Care Administration

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review, which shall be instituted by filing one copy of a notice of appeal with the Agency Clerk of AHCA, and a second copy, along with filing fee as prescribed by law, with the District Court of Appeal in the appellate district where the Agency maintains its headquarters or where a party resides. Review of proceedings shall be conducted in accordance with the Florida appellate rules. The Notice of Appeal must be filed within 30 days of rendition of the order to be reviewed.

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of this Final Order was served on the below-named persons by the method designated on this 21st day of October, 2011.



Richard Shoop, Agency Clerk
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop 3
Tallahassee, Florida 32308-5403
Telephone: (850) 412-3630

Jan Mills Facilities Intake Unit (Electronic Mail)	Finance & Accounting Revenue Management Unit (Electronic Mail)
Thomas J. Walsh, Esq. Office of the General Counsel Agency for Health Care Administration (Electronic Mail)	Deana Goldstein Chief Executive Officer The National Deaf Academy, LLC 19650 US Highway 441 Mount Dora, Florida 32757 (U.S. Mail)

**STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION**

STATE OF FLORIDA, AGENCY FOR HEALTH CARE
ADMINISTRATION,

Petitioner,

vs.

FRAES No: 2011008689

THE NATIONAL DEAF ACADEMY, LLC d/b/a
NATIONAL DEAF ACADEMY,

Respondent.

_____ /

ADMINISTRATIVE COMPLAINT

COMES NOW the Agency For Health Care Administration (hereinafter “Agency”), by and through the undersigned counsel, and files this Administrative Complaint against The National Deaf Academy, LLC d/b/a National Deaf Academy (hereinafter “Respondent”), pursuant to Sections 120.569 and 120.57, Florida Statutes (2011), and alleges:

NATURE OF THE ACTION

This is an action to impose upon the Respondent an administrative fine in the amount of three thousand dollars (\$3,000.00), pursuant to Sections 394.879(4) and 408.815(1), Florida Statutes (2011).

JURISDICTION AND VENUE

1. The Agency has jurisdiction pursuant to Sections 120.60, 394.875 and Chapter 408, Part II, Florida Statutes (2011).
2. Venue lies pursuant to Rule 28-106.207, Florida Administrative Code (2011).

PARTIES

3. The State of Florida, Agency for Health Care Administration (“the Agency”), is the licensure and regulatory authority that oversees residential treatment centers for children and

adolescents in Florida and enforces the applicable federal and state regulations, statutes and rules governing such facilities. Chs. 394, Part IV, and 408, Part II, Fla. Stat. (2011); Ch. 65E-9, Fla. Admin. Code.

4. Respondent operates a residential treatment center for children and adolescents located at 19650 US Highway 441, Mount Dora, Florida 32757, and was issued license number 40.

5. Respondent is currently and had previously been a licensed residential treatment center for children and adolescents under the licensing authority of the Agency, and was required to comply with all applicable rules and statutes.

COUNT I

6. The Agency re-alleges and incorporates paragraphs (1) through (5) as if fully set forth herein.

7. That pursuant to Florida law, the provider's personnel procedures shall ensure and require the inter-communication among staff of information regarding children necessary to the performance of each staff responsibility, including between working shifts, staff changes and consultations with professional staff. Where one staff member or one program group relies upon information provided through this required free interchange of information, these interactions shall be documented in writing and maintained in the respective children's case files. Rule 65E-9.007(2), Florida Administrative Code.

8. That on July 14, 2011, the Agency completed a complaint survey of the Respondent and its Facility, CCR Number 2011007487.

9. That based upon the review of records and interview, Respondent's failed to ensure the intercommunication among staff of information regarding children necessary to the performance of each staff responsibility, including between working shifts, staff changes and consultations with professional staff for one (1) of three (3) sampled residents where staff, including the

administration, supervisory personnel, and therapeutic staff were unaware that an employee utilized a bedroom closet as an intervention of seclusion and or time out on a resident on multiple occasions, said failure being contrary to the mandates of law.

10. That Petitioner's representative interviewed Respondent's employee number five (5) on July 13, 2011 who indicated as follows:

- a. He has utilized the bedroom closet of resident number three (3) as a time out area for the resident.
- b. He used the resident's bedroom closet because the resident became aggressive when the resident was in the resident's room.
- c. July 1, 2011 was probably the last time that he had utilized used the closet as a time out area for resident number three (3).
- d. His supervisor and the resident's therapists were all aware that he was using the closet as a time out area for resident number three (3).

11. That Petitioner's representative reviewed written statements of the supervisor of employee number five (5) regarding the use of a bedroom closet as a time out area for resident number three (3) and the supervisor indicated a lack of knowledge of such a practice until July 13, 2011.

12. That Petitioner's representative reviewed written statements of the two (2) therapists of resident number three (3) regarding the use of a bedroom closet as a time out area for resident number three (3) and the therapists indicated that they were not aware of this practice, nor had they authorized the use of the resident's closet as a time out area.

13. That Petitioner's representative reviewed Respondent's records related to resident number three (3) during the survey and noted as follows:

- a. Respondent's June, 2011 time out log revealed that employee number five

(5) had not documented that the resident had been placed into a closet as a time out.

- b. Absent from the records was any assessment of the physical and psychological well being of the resident conducted after the use of this intervention.

14. That Petitioner's representative interviewed Respondent's assistant administrator on July 14, 2011 regarding the monitoring of the utilization of time out and the individual indicated as follows:

- a. They review the time out logs for each resident on a monthly basis to identify possible problems.
- b. No other monitoring was identified to be utilized to identify problems with or the inappropriate use of interventions to address aggressive or maladaptive behaviors.

15. That the above reflects that Respondent failed to ensure the intercommunication among staff of information regarding children necessary to the performance of each staff responsibility, including between working shifts, staff changes and consultations with professional staff resulting in, inter alia, the inability of staff to assure the assessment and evaluation of the resident for physical and psychological well being after the use of this intervention.

16. That this failure places children at risk and of harm, including physical injury, emotional damage, and lack of medical attention to assess client who are subject to episodes of forced seclusion or time out.

17. That the Agency cited the Respondent for a violation of the minimum requirements of law.

18. Under Florida law, in accordance with part II of chapter 408, the Agency may impose an administrative penalty of no more than \$500 per day against any licensee that violates any rule adopted pursuant to this section and may suspend and revoke the license and deny the renewal application of such licensee. In imposing such penalty, the Agency shall consider the severity of the violation, actions taken by the licensee to correct the violation, and previous violations by the licensee. § 394.879(4), Fla. Stat. (2011).

19. Under Florida law, as a penalty for any violation of Chapter 408, Part II, the authorizing statutes, or the applicable rules, the Agency may impose an administrative fine. Unless the amount or aggregate limitation of the fine is prescribed by authorizing statutes or applicable rules, the Agency may establish criteria by rule for the amount or aggregate limitation of administrative fines applicable to this part, authorizing statutes, and applicable rules. Each day of violation constitutes a separate violation and is subject to a separate fine. For fines imposed by final order of the Agency and not subject to further appeal, the violator shall pay the fine plus interest at the rate specified in Section 55.03, Florida Statutes, for each day beyond the date set by the Agency for payment of the fine. § 408.813, Fla. Stat. (2011).

WHEREFORE, the Agency intends to impose an administrative fine in the amount of five hundred dollars (\$500.00) against Respondent, a residential treatment center in the State of Florida, pursuant to §§ 394.879 and 408.813, Florida Statutes (2011).

COUNT II

20. The Agency re-alleges and incorporates paragraphs (1) through (5) as if fully set forth herein.

21. The Agency re-alleges and incorporates paragraphs (1) through (5) as if fully set forth herein.

22. That pursuant to Florida law, the provider shall protect children's rights under the federal

and state constitutions and as specified in Sections 394.459 and 394.4615, F.S. The provider shall also ensure that: (a) Physical punishment and treatment modalities that place the child at risk of physical injury or pain or death, including electroconvulsive or other convulsive therapy, “cocoon therapy,” or other hazardous procedures shall never be used. (b) Children shall not be subjected to cruel, severe, unusual or unnecessary punishment or assigned excessive exercise or work duties, nor shall they be subjected to physical or mental abuse or corporal punishment. (c) The simultaneous use of seclusion and mechanical restraint is prohibited. (d) Children shall not be subjected to hazing, verbal abuse, coercion or remarks that ridicule them, their families or others. (e) Children shall not be denied food, water, clothing, or medical care. (f) Children shall not be exploited or required to make public statements to acknowledge gratitude to the provider program or perform at public gatherings. (g) Identifiable pictures of children shall not be used without prior written consent of the parent or guardian. The signed consent form for any such usage shall be event-specific, indicate how the pictures will be used, and placed in the child’s clinical record. Rule 65E-9.012(1), Florida Administrative Code.

23. That on July 14, 2011, the Agency completed a complaint survey of the Respondent and its Facility, CCR Number 2011007487.

24. That based upon the review of records and interview, Respondent failed to ensure the rights of its residents to be free from cruel, severe, unusual or unnecessary punishment and to physical or mental abuse for one (1) of three (3) sampled residents where interventions which were not approved or prescribed were utilized on a resident and that the resident was not appropriately assessed or monitored to assure the health and safety of the resident during or after the use of the intervention, the same being contrary to the mandates of law.

25. That Petitioner’s representative interviewed on July 12, 2011 an individual who had been visiting at Respondent’s facility and the individual indicated as follows:

- a. The individual was at the facility during the week of June 27, 2011.
- b. An unknown staff member was observed placing an unknown resident into a dark closet and blocking the resident in the closet by placing a bed across the door.
- c. When the staff person noticed that he was being watched, he removed the bed and held the door shut with his foot.

26. That Petitioner's representative reviewed Respondent's personnel records on July 12, 2011, and noted that employee number five (5) fit the description of the employee that was witnessed placing a resident in the closet.

27. That Petitioner's representative interviewed Respondent's employee number five (5) on July 13, 2011 who indicated as follows:

- a. He did use a bedroom closet as a time out area for one of the residents assigned to his care during the week of June 27, 2011.
- b. He identified resident number three (3), who fit the description of the resident given by the witness, as being the resident that he put in the closet.
- c. He could not remember if he had put resident number three (3) into the closet during the week of June 27, 2011.
- d. Resident number three (3) has been stable for a long time.
- e. July 1, 2011 was probably the last time that he used the closet as a time out area for resident number three (3).
- f. He used the closet because the resident number three (3) became aggressive when he was in his room.
- g. When he used the closet as a time out area, he left the door open so that he

could maintain communication with resident number three (3).

- h. When asked how long resident number three (3) was left in the closet, the employee stated less than twenty (20) minutes.
- i. When asked if the administrative staff was aware that he was using the closet as a time out area, he stated that his supervisor, and the resident's therapist knew that he was using the closet as a time out area; and that he thought that they had advised other administrative staff of this practice.

28. That Petitioner's representative reviewed Respondent's records related to resident number three (3) during the survey and noted as follows:

- a. The resident is an adolescent male.
- b. The resident is an out of state resident who was admitted into the care of the facility on 0January 30, 2007, with the following diagnoses: Autism; Distractibility Impulsivity, and Fidgetiness; Poor Communication Skills; Obsessive, and Compulsive Behaviors; Poor Social Skills; Aerophagia; Mild Mental Retardation; and Profound Bilateral Deafness.
- c. Problem number one (1) of the resident's treatment plan addresses potential to violence toward staff, and others and interventions for these behaviors include the following instructions: "Continue to get behind [resident number three (3)] instead of in front of him as he becomes threatened, and lashes out more if staff intervenes from the front."
- d. Further interventions for problems one (1) to four (4) revealed that employees were never instructed to use the resident's closet as a time out area.
- e. Problem number three (3) addresses the resident's language development

abilities, and recorded that the resident has a limited sign vocabulary, and often must be prompted to communicate basic wants, and needs independently.

29. That Petitioner's representative toured the Respondent facility on July 13, 2011 beginning at 12:30 PM and noted as follows;

- a. The unit bedrooms sleep four (4) residents, and have a walk-in closet that is approximately 12 by 12 in area that is used for storage for all four (4) residents' clothing and personal belongings.
- b. Included in the closet is a chest of drawers for each resident.
- c. The door to the closet is a solid door.
- d. The beds used are heavy structures that could not be easily pushed away if trying to open the door from inside the closet.
- e. House two (2) and the cafeteria are in the same building, and connected by a door that is not locked.
- f. Three (3) time out rooms that do not have doors are located in the cafeteria area directly across from the nurse's station.

30. That Petitioner's representative interviewed Respondent's Chief Executive Officer, The Director of Nursing (DON), The Director of Human Resources (HR), and The Utilization Review Nurse on July 13, 2011 regarding the use of a bedroom as a time out for resident number three (3) and the following was indicated:

- a. When advised that employee number five (5) had reported that he has used the closet as a time out area, and that his supervisor, and the therapists of resident number three (3) were aware that he was using this method of time out for the resident, the group response was that a bedroom closet is

not a designated time out area.

- b. It was further reported that time out is voluntary, and that the emergency team should have been called if employee number five (5) could not independently deescalate the behavior of resident number three (3).
- c. As employee number five (5) had not recorded using a closet as a time out area, they were not aware of this practice.

31. That Petitioner's representative interviewed Respondent's human resources director on July 14, 2011 who provided written statements of the supervisor of employee number five (5) and the therapists of resident number three (3) which reflected as follows:

- a. The supervisor of employee number five (5) indicated a lack of knowledge of the use of a bedroom closet as a time out area for resident number three (3) until July 13, 2011.
- b. The two (2) therapists of resident number three (3) indicated that they were not aware of regarding the use of a bedroom closet as a time out area for resident number three (3), nor had they authorized the use of the resident's closet as a time out area.

32. That Petitioner's representative reviewed Respondent's policy and procedure presented related to abuse prevention and noted as follows:

- a. The facility provided Policy Number: R1:101, The Definition of Abuse, Neglect, and Exploitation; and R1: 102, Reporting Allegations/Disclosures of Abuse, and/or Neglect.
- b. The abuse policies and procedures presented did not include a system for monitoring the employees for practices that place the residents at risk for severe, unusual/unnecessary punishment; and physical/mental abuse or

corporal punishment.

33. That the above reflects that rights of its residents to be free from cruel, severe, unusual or unnecessary punishment and to physical or mental abuse for one (1) of three (3) sampled residents where interventions which were not approved or prescribed were utilized on a resident and that the resident was not appropriately assessed or monitored to assure the health and safety of the resident during or after the use of the intervention.

34. That this failure places children at risk and of harm, including physical injury, emotional damage, and lack of medical attention to assess client who are subject to episodes of forced seclusion or time out.

35. That the Agency cited the Respondent for a violation of the minimum requirements of law.

36. Under Florida law, in accordance with part II of chapter 408, the Agency may impose an administrative penalty of no more than \$500 per day against any licensee that violates any rule adopted pursuant to this section and may suspend and revoke the license and deny the renewal application of such licensee. In imposing such penalty, the Agency shall consider the severity of the violation, actions taken by the licensee to correct the violation, and previous violations by the licensee. § 394.879(4), Fla. Stat. (2011).

37. Under Florida law, as a penalty for any violation of Chapter 408, Part II, the authorizing statutes, or the applicable rules, the Agency may impose an administrative fine. Unless the amount or aggregate limitation of the fine is prescribed by authorizing statutes or applicable rules, the Agency may establish criteria by rule for the amount or aggregate limitation of administrative fines applicable to this part, authorizing statutes, and applicable rules. Each day of violation constitutes a separate violation and is subject to a separate fine. For fines imposed by final order of the Agency and not subject to further appeal, the violator shall pay the fine plus

interest at the rate specified in Section 55.03, Florida Statutes, for each day beyond the date set by the Agency for payment of the fine. § 408.813, Fla. Stat. (2011).

WHEREFORE, the Agency intends to impose an administrative fine in the amount of five hundred dollars (\$500.00) against Respondent, a residential treatment center in the State of Florida, pursuant to §§ 394.879 and 408.813, Florida Statutes (2011).

COUNT III

38. The Agency re-alleges and incorporates paragraphs (1) through (5) as if fully set forth herein.

39. That pursuant to Florida law, restraint or seclusion shall not be used for purposes of punishment, coercion, discipline, convenience, or retaliation by staff or to compensate for inadequate staffing. Rule 65E-9.013(1)(c), Florida Administrative Code.

40. That on July 14, 2011, the Agency completed a complaint survey of the Respondent and its Facility, CCR Number 2011007487.

That based upon the review of records and interview, Respondent utilized seclusion for purposes other than treatment of a child within its care, said seclusion identified as utilized in response to the child's aggressive behavior, the same being contrary to the mandates of law

42. That Petitioner's representative interviewed on July 12, 2011 an individual who had been visiting at Respondent's facility and the individual indicated as follows:

- a. The individual was at the facility during the week of June 27, 2011.
- b. An unknown staff member was observed placing an unknown resident into a dark closet and blocking the resident in the closet by placing a bed across the door.
- c. When the staff person noticed that he was being watched, he removed the bed and held the door shut with his foot.

43. That Petitioner's representative interviewed Respondent's employee number five (5) on July 13, 2011 who indicated as follows:

- a. He did use a bedroom closet as a time out area for resident number three (3).
- b. July 1, 2011 was probably the last time that he used the closet as a time out area for resident number three (3).
- c. He used the closet because the resident number three (3) became aggressive when he was in his room.
- d. When he used the closet as a time out area, he left the door open so that he could maintain communication with resident number three (3).
- e. When asked how long resident number three (3) was left in the closet, the employee stated less than twenty (20) minutes.

44. That Petitioner's representative reviewed Respondent's records related to resident number three (3) and noted as follows;

- a. The resident's February 7, 2011 psychiatric evaluation identified the resident suffered from developmental delays and poor communication skills.
- b. No part of the resident's treatment plan identified or authorized the use of seclusion for the resident.
- c. The utilization of a bedroom closet as a seclusion area for resident number three (3) was not noted or otherwise documented in any record.

45. That Petitioner's representative interviewed Respondent's Chief Executive Officer, The Director of Nursing (DON), The Director of Human Resources (HR), and The Utilization Review Nurse on July 13, 2011 regarding the use of a bedroom as a time out for resident number

three (3) and the following was indicated:

- a. When advised that employee number five (5) had reported that he has used the closet as a time out area, and that his supervisor, and the therapists of resident number three (3) were aware that he was using this method of time out for the resident, the group response was that a bedroom closet is not a designated time out area.
- b. It was further reported that time out is voluntary, and that the emergency team should have been called if employee number five (5) could not independently deescalate the behavior of resident number three (3).
- c. Seclusion is not an approved intervention to be utilized for resident number three (3).

46. That Petitioner's representative toured the respondent facility on July 13, 2011 beginning at 12:30 PM and noted as follows;

- a. House two (2) and the cafeteria are in the same building, and connected by a door that is not locked.
- b. Three (3) time out rooms that do not have doors are located in the cafeteria area directly across from the nurse's station.

47. That the above reflects that Respondent, by and through its agent, utilized seclusion on a child for purposes of punishment, discipline, or convenience of staff, said being contrary to the mandates of law and resulting in, inter alia, the endangerment of the child's health and safety.

48. That this failure places children at risk and of harm, including physical injury, emotional damage, and lack of medical attention to assess client who are subject to seclusion and time out.

49. That the Agency cited the Respondent for a violation of the minimum requirements of law. Under Florida law, in accordance with part II of chapter 408, the Agency may impose an

administrative penalty of no more than \$500 per day against any licensee that violates any rule adopted pursuant to this section and may suspend and revoke the license and deny the renewal application of such licensee. In imposing such penalty, the Agency shall consider the severity of the violation, actions taken by the licensee to correct the violation, and previous violations by the licensee. § 394.879(4), Fla. Stat. (2011).

50. Under Florida law, as a penalty for any violation of Chapter 408, Part II, the authorizing statutes, or the applicable rules, the Agency may impose an administrative fine. Unless the amount or aggregate limitation of the fine is prescribed by authorizing statutes or applicable rules, the Agency may establish criteria by rule for the amount or aggregate limitation of administrative fines applicable to this part, authorizing statutes, and applicable rules. Each day of violation constitutes a separate violation and is subject to a separate fine. For fines imposed by final order of the Agency and not subject to further appeal, the violator shall pay the fine plus interest at the rate specified in Section 55.03, Florida Statutes, for each day beyond the date set by the Agency for payment of the fine. § 408.813, Fla. Stat. (2011).

WHEREFORE, the Agency intends to impose an administrative fine in the amount of five hundred dollars (\$500.00) against Respondent, a residential treatment center in the State of Florida, pursuant to §§ 394.879 and 408.813, Florida Statutes (2011).

COUNT IV

51. The Agency re-alleges and incorporates paragraphs (1) through (5) as if fully set forth herein.

52. That pursuant to Florida law, restraint or seclusion shall be used and continued only pursuant to an order by a board certified or board eligible psychiatrist licensed under Chapter 458, F.S., or licensed physician with specialized training and experience in diagnosing and treating mental disorders and who is the child's treatment team physician. If the child's treatment

team physician is unavailable, the physician covering for the treatment team physician may meet these qualifications. Physicians allowed to order seclusion and restraint, pursuant to this rule, must be trained in the use of emergency safety interventions prior to ordering them. Rule 65E-9.013(3)(a), Florida Administrative Code.

53. That on July 14, 2011, the Agency completed a complaint survey of the Respondent and its Facility, CCR Number 2011007487.

54. That based upon the review of records and interview, Respondent's failed to ensure that seclusion is utilized for residents only pursuant to an order by an appropriately qualified health care professional, the same being contrary to the mandates of law and placing the child at risk of emotional and or physical harm, including the failure to assess the child's health after having been subjected to seclusion.

55. That Petitioner's representative interviewed on July 12, 2011 an individual who had been visiting at Respondent's facility and the individual indicated as follows:

- a. The individual was at the facility during the week of June 27, 2011.
- b. An unknown staff member was observed placing an unknown resident into a dark closet and blocking the resident in the closet by placing a bed across the door.
- c. When the staff person noticed that he was being watched, he removed the bed and held the door shut with his foot.

56. That Petitioner's representative interviewed Respondent's employee number five (5) on July 13, 2011 who indicated as follows:

- a. He did use a bedroom closet as a time out area for one of the residents assigned to his care.
- b. July 1, 2011 was probably the last time that he used the closet as a time

out area for resident number three (3).

- c. He used the closet because the resident number three (3) became aggressive when he was in his room.

57. That Petitioner's representative reviewed written statements of the supervisor of employee number five (5) regarding the use of a bedroom closet as a time out area for resident number three (3) and the supervisor indicated a lack of knowledge of such a practice until July 13, 2011 when employee number five (5) informed him of the use of the closet as an intervention for resident number three (3).

58. That Petitioner's representative reviewed Respondent's time out log during the survey and noted that there was no entry reflecting that the bedroom closet had been utilized as an intervention for seclusion or time out for resident number three (3).

59. That Petitioner's representative reviewed Respondent's records related to resident number three (3) during the survey and noted no physician's order authorizing the use of seclusion as an intervention for resident number three (3).

60. That Petitioner's representative interviewed Respondent's assistant administrator regarding the use of seclusion or time out for resident number three (3) and the individual indicted as follows:

- a. Because employee number five (5) did not report or record the resident's closet area was being used as a seclusion or time out area, no physician's order was obtained.
- b. It is not facility practice to use seclusion, and no orders for seclusion would be found in the resident's file.

61. That the above reflects that Respondent failed to failed to ensure that seclusion is utilized for residents only pursuant to an order by an appropriately qualified health care professional, the same being contrary to the mandates of law
62. That this failure places children at risk and of harm, including physical injury, emotional damage, and lack of medical attention to assess client who are subject to seclusion and time out.
63. That the Agency cited the Respondent for a violation of the minimum requirements of law.
64. Under Florida law, in accordance with part II of chapter 408, the Agency may impose an administrative penalty of no more than \$500 per day against any licensee that violates any rule adopted pursuant to this section and may suspend and revoke the license and deny the renewal application of such licensee. In imposing such penalty, the Agency shall consider the severity of the violation, actions taken by the licensee to correct the violation, and previous violations by the licensee. § 394.879(4), Fla. Stat. (2011).
65. Under Florida law, as a penalty for any violation of Chapter 408, Part II, the authorizing statutes, or the applicable rules, the Agency may impose an administrative fine. Unless the amount or aggregate limitation of the fine is prescribed by authorizing statutes or applicable rules, the Agency may establish criteria by rule for the amount or aggregate limitation of administrative fines applicable to this part, authorizing statutes, and applicable rules. Each day of violation constitutes a separate violation and is subject to a separate fine. For fines imposed by final order of the Agency and not subject to further appeal, the violator shall pay the fine plus interest at the rate specified in Section 55.03, Florida Statutes, for each day beyond the date set by the Agency for payment of the fine. § 408.813, Fla. Stat. (2011).

WHEREFORE, the Agency intends to impose an administrative fine in the amount of five hundred dollars (\$500.00) against Respondent, a residential treatment center in the State of Florida, pursuant to §§ 394.879 and 408.813, Florida Statutes (2011).

COUNT V

66. The Agency re-alleges and incorporates paragraphs (1) through (5) as if fully set forth herein.

67. That pursuant to Florida law, time-out shall be used only for the purpose of providing a child with the opportunity to regain self-control and not as a consequence or punishment. Rule 65E-9.013(11)(a), Florida Administrative Code.

68. That on July 14, 2011, the Agency completed a complaint survey of the Respondent and its Facility, CCR Number 2011007487.

69. That based upon the review on interview, observation and record review, Respondent utilized time out on a child for purposes other than the opportunity to regain self control where a child was placed in seclusion or time out as a result of the child's aggressive behavior, the same being contrary to law.

70. That Petitioner's representative interviewed on July 12, 2011 an individual who had been visiting at Respondent's facility and the individual indicated as follows:

- a. The individual was at the facility during the week of June 27, 2011.
- b. An unknown staff member was observed placing an unknown resident into a dark closet and blocking the resident in the closet by placing a bed across the door.
- c. When the staff person noticed that he was being watched, he removed the bed and held the door shut with his foot.

71. That Petitioner's representative interviewed Respondent's employee number five (5) on

July 13, 2011 who indicated as follows:

- a. He did use a bedroom closet as a time out area for one of the residents assigned to his care during the week of June 27, 2011.
- b. He identified resident number three (3), who fit the description of the resident given by the witness, as being the resident that he put in the closet.
- c. He could not remember if he had put resident number three (3) into the closet during the week of June 27, 2011.
- d. Resident number three (3) has been stable for a long time.
- e. July 1, 2011 was probably the last time that he used the closet as a time out area for resident number three (3).
- f. He used the closet because the resident number three (3) became aggressive when he was in his room.
- g. When he used the closet as a time out area, he left the door open so that he could maintain communication with resident number three (3).
- h. When asked how long resident number three (3) was left in the closet, the employee stated less than twenty (20) minutes.
- i. When asked if the administrative staff was aware that he was using the closet as a time out area, he stated that his supervisor, and the resident's therapist knew that he was using the closet as a time out area; and that he thought that they had advised other administrative staff of this practice.

72. That Petitioner's representative reviewed Respondent's records related to resident number three (3) during the survey and noted as follows:

- a. The resident is an adolescent male.

- b. The resident is an out of state resident who was admitted into the care of the facility on 0January 30, 2007, with the following diagnoses: Autism; Distractibility Impulsivity, and Fidgetiness; Poor Communication Skills; Obsessive, and Compulsive Behaviors; Poor Social Skills; Aerophagia; Mild Mental Retardation; and Profound Bilateral Deafness.
- c. Problem number one (1) of the resident's treatment plan addresses potential to violence toward staff, and others and interventions for these behaviors include the following instructions: "Continue to get behind [resident number three (3)] instead of in front of him as he becomes threatened, and lashes out more if staff intervenes from the front."
- d. Further interventions for problems one (1) to four (4) revealed that employees were never instructed to use the resident's closet as a time out area.
- e. Problem number three (3) addresses the resident's language development abilities, and recorded that the resident has a limited sign vocabulary, and often must be prompted to communicate basic wants, and needs independently.

73. That Petitioner's representative toured the Respondent facility on July 13, 2011 beginning at 12:30 PM and noted as follows;

- a. The unit bedrooms sleep four (4) residents, and have a walk-in closet that is approximately 12 by 12 in area that is used for storage for all four (4) residents' clothing and personal belongings.
- b. Included in the closet is a chest of drawers for each resident.
- c. The door to the closet is a solid door.

- d. The beds used are heavy structures that could not be easily pushed away if trying to open the door from inside the closet.
- e. House two (2) and the cafeteria are in the same building, and connected by a door that is not locked.
- f. Three (3) time out rooms that do not have doors are located in the cafeteria area directly across from the nurse's station.

74. That Petitioner's representative interviewed Respondent's Chief Executive Officer, The Director of Nursing (DON), The Director of Human Resources (HR), and The Utilization Review Nurse on July 13, 2011 regarding the use of a bedroom as a time out for resident number three (3) and the following was indicated:

- a. When advised that employee number five (5) had reported that he has used the closet as a time out area, and that his supervisor, and the therapists of resident number three (3) were aware that he was using this method of time out for the resident, the group response was that a bedroom closet is not a designated time out area.
- b. It was further reported that time out is voluntary, and that the emergency team should have been called if employee number five (5) could not independently deescalate the behavior of resident number three (3).
- c. As employee number five (5) had not recorded using a closet as a time out area, they were not aware of this practice.

75. That Petitioner's representative interviewed Respondent's human resources director on July 14, 2011 who provided written statements of the supervisor of employee number five (5) and the therapists of resident number three (3) which reflected as follows:

- a. The supervisor of employee number five (5) indicated a lack of knowledge

of the use of a bedroom closet as a time out area for resident number three (3) until July 13, 2011.

- b. The two (2) therapists of resident number three (3) indicated that they were not aware of regarding the use of a bedroom closet as a time out area for resident number three (3), nor had they authorized the use of the resident's closet as a time out area.

76. That the above reflects that Respondent's utilization of time out without any therapeutic purpose but as a result of an exhibited behavior, the same placing the child at risk of emotional and physical harm.

77. That these failures, individually and collectively, place children at risk and or harm, including physical injury, emotional damage, and lack of medical attention to assess client who are subject to seclusion and time out.

78. That the Agency cited the Respondent for a violation of the minimum requirements of law.

79. Under Florida law, in accordance with part II of chapter 408, the Agency may impose an administrative penalty of no more than \$500 per day against any licensee that violates any rule adopted pursuant to this section and may suspend and revoke the license and deny the renewal application of such licensee. In imposing such penalty, the Agency shall consider the severity of the violation, actions taken by the licensee to correct the violation, and previous violations by the licensee. § 394.879(4), Fla. Stat. (2011).

80. Under Florida law, as a penalty for any violation of Chapter 408, Part II, the authorizing statutes, or the applicable rules, the Agency may impose an administrative fine. Unless the amount or aggregate limitation of the fine is prescribed by authorizing statutes or applicable rules, the Agency may establish criteria by rule for the amount or aggregate limitation of

administrative fines applicable to this part, authorizing statutes, and applicable rules. Each day of violation constitutes a separate violation and is subject to a separate fine. For fines imposed by final order of the Agency and not subject to further appeal, the violator shall pay the fine plus interest at the rate specified in Section 55.03, Florida Statutes, for each day beyond the date set by the Agency for payment of the fine. § 408.813, Fla. Stat. (2011).

WHEREFORE, the Agency intends to impose an administrative fine in the amount of five hundred dollars (\$500.00) against Respondent, a residential treatment center in the State of Florida, pursuant to §§ 394.879 and 408.813, Florida Statutes (2011).

COUNT VI

81. The Agency re-alleges and incorporates paragraphs (1) through (5) as if fully set forth herein.

82. That pursuant to Florida law, the child shall not be physically prevented from leaving the time-out area. Rule 65E-9.013(11)(gl), Florida Administrative Code.

83. That on July 14, 2011, the Agency completed a complaint survey of the Respondent and its Facility, CCR Number 2011007487.

84. That based upon the interview, observation and record review, it was determined that Respondent failed to ensure that the resident was placed in a time out area without barriers that could prevent the resident from leaving, the same being contrary to the mandates of law, said being without the assessment, approval, or review for safety by the treatment team for this resident.

85. That Petitioner's representative interviewed on July 12, 2011 an individual who had been visiting at Respondent's facility and the individual indicated as follows:

- a. The individual was at the facility during the week of June 27, 2011.
- b. An unknown staff member was observed placing an unknown resident into

a dark closet and blocking the resident in the closet by placing a bed across the door.

- c. When the staff person noticed that he was being watched, he removed the bed and held the door shut with his foot.

86. That Petitioner's representative interviewed Respondent's employee number five (5) on July 13, 2011 who indicated as follows:

- a. He did use a bedroom closet as a time out area for one of the residents assigned to his care during the week of June 27, 2011.
- b. He identified resident number three (3), who fit the description of the resident given by the witness, as being the resident that he put in the closet.
- c. He used the closet because the resident number three (3) became aggressive when he was in his room.
- d. When asked how long resident number three (3) was left in the closet, the employee stated less than twenty (20) minutes.

87. That Petitioner's representative toured the Respondent facility on July 13, 2011 beginning at 12:30 PM and noted as follows;

- a. The unit bedrooms sleep four (4) residents, and have a walk-in closet that is approximately 12 by 12 in area that is used for storage for all four (4) residents' clothing and personal belongings.
- b. Included in the closet is a chest of drawers for each resident.
- c. The door to the closet is a solid door.
- d. The beds used are heavy structures that could not be easily pushed away if trying to open the door from inside the closet.

- e. House two (2) and the cafeteria are in the same building, and connected by a door that is not locked.
- f. Three (3) time out rooms that do not have doors are located in the cafeteria area directly across from the nurse's station.

88. That Petitioner's representative reviewed Respondent's records related to resident number three (3) during the survey and noted as follows:

- a. The resident is an adolescent male.
- b. The resident is an out of state resident who was admitted into the care of the facility on January 30, 2007, with the following diagnoses: Autism; Distractibility Impulsivity, and Fidgetiness; Poor Communication Skills; Obsessive, and Compulsive Behaviors; Poor Social Skills; Aerophagia; Mild Mental Retardation; and Profound Bilateral Deafness.
- c. Problem number one (1) of the resident's treatment plan addresses potential to violence toward staff, and others and interventions for these behaviors include the following instructions: "Continue to get behind [resident number three (3)] instead of in front of him as he becomes threatened, and lashes out more if staff intervenes from the front."
- d. Further interventions for problems one (1) to four (4) revealed that employees were never instructed to use the resident's closet as a time out area.
- e. Problem number three (3) addresses the resident's language development abilities, and recorded that the resident has a limited sign vocabulary, and often must be prompted to communicate basic wants, and needs independently.

- f. Absent from the record was any indication that a bedroom closet had been used as an intervention as seclusion or time out for resident number three (3).

89. That Petitioner's representative interviewed Respondent's Chief Executive Officer, The Director of Nursing (DON), The Director of Human Resources (HR), and The Utilization Review Nurse on July 13, 2011 regarding the use of a bedroom as a time out for resident number three (3) and the following was indicated:

- a. When advised that employee number five (5) had reported that he has used the closet as a time out area, and that his supervisor, and the therapists of resident number three (3) were aware that he was using this method of time out for the resident, the group response was that a bedroom closet is not a designated time out area.
- b. It was further reported that time out is voluntary, and that the emergency team should have been called if employee number five (5) could not independently deescalate the behavior of resident number three (3).

90. That the above reflects that Respondent, by and through its governing body, is unwilling or unable to fulfill its responsibilities in maintaining the Respondent facility in compliance with the minimum mandates of law.

91. That this failure places children at risk and of harm, including physical injury, emotional damage, and lack of medical attention to assess client who are subject to episodes of forced seclusion or time out.

92. That the Agency cited the Respondent for a violation of the minimum requirements of law.

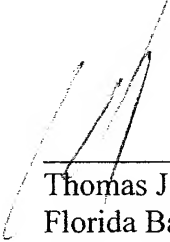
93. Under Florida law, in accordance with part II of chapter 408, the Agency may impose an

administrative penalty of no more than \$500 per day against any licensee that violates any rule adopted pursuant to this section and may suspend and revoke the license and deny the renewal application of such licensee. In imposing such penalty, the Agency shall consider the severity of the violation, actions taken by the licensee to correct the violation, and previous violations by the licensee. § 394.879(4), Fla. Stat. (2011).

94. Under Florida law, as a penalty for any violation of Chapter 408, Part II, the authorizing statutes, or the applicable rules, the Agency may impose an administrative fine. Unless the amount or aggregate limitation of the fine is prescribed by authorizing statutes or applicable rules, the Agency may establish criteria by rule for the amount or aggregate limitation of administrative fines applicable to this part, authorizing statutes, and applicable rules. Each day of violation constitutes a separate violation and is subject to a separate fine. For fines imposed by final order of the Agency and not subject to further appeal, the violator shall pay the fine plus interest at the rate specified in Section 55.03, Florida Statutes, for each day beyond the date set by the Agency for payment of the fine. § 408.813, Fla. Stat. (2011).

WHEREFORE, the Agency intends to impose an administrative fine in the amount of five hundred dollars (\$500.00) against Respondent, a residential treatment center in the State of Florida, pursuant to §§ 394.879 and 408.813, Florida Statutes (2011).

Respectfully submitted on this 22 day of August, 2011.



Thomas J. Walsh II, Senior Attorney
Florida Bar No. 566365
Office of the General Counsel
Agency for Health Care Administration
525 Mirror Lake Drive North, Suite 330
St. Petersburg, Florida 33701
Telephone: (727) 552-1947

NOTICE

The Respondent is notified that it/he/she has the right to request an administrative hearing pursuant to Sections 120.569 and 120.57, Florida Statutes. If the Respondent wants to hire an attorney, it/he/she has the right to be represented by an attorney in this matter. Specific options for administrative action are set out in the attached Election of Rights form.

The Respondent is further notified if the Election of Rights form is not received by the Agency for Health Care Administration within twenty-one (21) days of the receipt of this Administrative Complaint, a Final Order will be entered against the Respondent.

The Election of Rights form shall be made to the Agency for Health Care Administration and delivered to: Agency Clerk, Agency for Health Care Administration, 2727 Mahan Drive, Building 3, Mail Stop 3, Tallahassee, FL 32308; Telephone (850) 412-3630.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Administrative Complaint and Election of Rights form have been served to Deana Goldstein, Chief Executive Officer, The National Deaf Academy, LLC, 19650 US Highway 441, Mount Dora, Florida 32757, by U.S. Certified Mail, Return Receipt No.7011 0470 0000 7951 4033 and by Regular U.S. Mail to CT Corporation System, Registered Agent for The National Deaf Academy, LLC, 1200 South Pine Island Road, Plantation, Florida, 33324, on this 22 day of August, 2011.



Thomas J. Walsh II

Copies furnished to:

Deana Goldstein Chief Executive Officer The National Deaf Academy, LLC 19650 US Highway 441 Mount Dora, Florida 32757 (U.S. Certified Mail)	Kriste Mennella Field Office Manager Agency for Health Care Administration Alachua, Florida (Interoffice Mail)
CT Corporation System Registered Agent for The national Deaf Academy, LLC 1200 South Pine Island Road Plantation, Florida, 33324 (Regular U.S. Mail)	

STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION

RE: THE NATIONAL DEAF ACADEMY, LLC d/b/a
NATIONAL DEAF ACADEMY,

Case No: 2011008689

ELECTION OF RIGHTS

This **Election of Rights** form is attached to a proposed action by the Agency for Health Care Administration (AHCA). The title may be an **Administrative Complaint, Notice of Intent to Impose a Late Fee, or Notice of Intent to Impose a Late Fine.**

Your Election of Rights must be returned by mail or by fax within twenty-one (21) days of the date you receive the attached Administrative Complaint, Notice of Intent to Impose a Late Fee, or Notice of Intent to Impose a Late Fine.

If your Election of Rights with your elected Option is not received by AHCA within twenty-one (21) days from the date you received this notice of proposed action by AHCA, you will have given up your right to contest the Agency's proposed action and a Final Order will be issued.

Please use this form unless you, your attorney or your representative prefer to reply in accordance with Chapter 120, Florida Statutes and Rule 28, Florida Administrative Code.

PLEASE RETURN YOUR **ELECTION OF RIGHTS** TO THIS ADDRESS:

Agency for Health Care Administration
Attention: Agency Clerk
2727 Mahan Drive, Mail Stop #3
Tallahassee, Florida 32308
Phone: 850-922-5873 Fax: 850-921-0158

PLEASE SELECT ONLY 1 OF THESE 3 OPTIONS

OPTION ONE (1) ____ I admit the allegations of fact and law contained in the Notice of Intent to Impose a Late Fine or Fee, or Administrative Complaint and I waive my right to object and to have a hearing. I understand that by giving up my right to a hearing, a Final Order will be issued that adopts the proposed agency action and imposes the penalty, fine or action.

OPTION TWO (2) ____ I admit the allegations of fact and law contained in the Notice of Intent to Impose a Late Fine or Fee, or Administrative Complaint, but I wish to be heard at an informal proceeding (pursuant to Section 120.57(2), Florida Statutes) where I may submit testimony and written evidence to the Agency to show that the proposed administrative action is too severe or that the fine should be reduced.

OPTION THREE (3) ____ I dispute the allegations of fact and law contained in the Notice of Intent to Impose a Late Fee, the Notice of Intent to Impose a Late Fine, or Administrative Complaint, and I request a formal hearing (pursuant to Subsection 120.57(1), Florida Statutes) before an Administrative Law Judge appointed by the Division of Administrative Hearings.

PLEASE NOTE: Choosing **OPTION THREE (3)** by itself is **NOT** sufficient to obtain a formal hearing. You also must file a written petition in order to obtain a formal hearing before the Division of Administrative Hearings under Section 120.57(1), Florida Statutes. It must be received by the Agency Clerk at the address above **within 21 days** of your receipt of this proposed administrative action. The request for formal hearing must conform to the requirements of Rule 28-106.2015, Florida Administrative Code, which requires that it contain:

1. Your name, address, telephone number, and the name, address, and telephone number of your representative or lawyer, if any.
2. The file number of the proposed action.
3. A statement of when you received notice of the Agency's proposed action.
4. A statement of all disputed issues of material fact. If there are none, you must state that there are none.

Mediation under Section 120.573, Florida Statutes may be available in this matter if the Agency agrees.

License Type: _____ (Assisted Living Facility, Nursing Home, Medical Equipment, Other)

Licensee Name: _____ License Number: _____

Contact Person: _____
Name Title

Address: _____
Street and Number City State Zip Code

Telephone No. _____ Fax No. _____ E-Mail (optional) _____

I hereby certify that I am duly authorized to submit this Notice of Election of Rights to the Agency for Health Care Administration on behalf of the above licensee.

Signature: _____

Date: _____

Print Name: _____

Title: _____

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Deana Goldstein
Chief Executive Officer
The National Deaf Academy, LLC
19650 US Highway 441
Mount Dora, Florida 32757

COMPLETE THIS SECTION ON DELIVERY

- A. Signature
X *Carol Bordell* ☐ Agent ☐ Addressee
- B. Received by (Printed Name) *Carol Bordell* C. Date of Delivery *8/24/11*
- D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

3. Service Type
- ☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes ☐ No

2. Article
(Trace)

7011 0470 0000 7951 4033

Walsh

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540